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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7

8 EDWARD D. JONES,
9 Plaintiff,

No. C 11-1340 SI (pr)

ORDER OF DISMISSAL

10 v.

11 RAYMOND JACOBS,
12 Defendants.
13 _____/

14 Upon initial review of the complaint in this *pro se* prisoner's civil rights action, the court
15 noted that the complaint appeared to be untimely and directed plaintiff to show cause why the
16 action should not be dismissed as barred by the statute of limitations. *See* Order To Show Cause
17 Re. Statute Of Limitations Problem. Jones filed "plaintiff's response to order to show cause re.
18 statute of limitations problem" on October 28, 2011.

19 The court will not repeat the analysis of its order to show cause, and instead simply
20 summarizes the relevant points: In his complaint filed March 21, 2011, Jones alleged that he
21 was subjected to excessive force by Raymond Jacobs on April 26, 2003. Assuming there was
22 no delayed discovery – an unlikely event in light of the nature of the claim – the cause of action
23 accrued that day and Jones had to file his civil rights complaint within two years (i.e., by April
24 26, 2005) to be timely under the applicable limitations period. Jones receives no tolling of the
25 limitations period for the disability of imprisonment because he is serving a sentence of life
26 without the possibility of parole and therefore is not in prison "for a term less than for life." *See*
27 Cal. Civ. Proc. Code § 352.1. Jones' argument that the limitations period should be tolled "due
28 to traumatic trauma injury(s) due to assault(s)," Docket # 6, p. 1 (errors in source), was rejected
because the evidence he submitted would not support nearly enough tolling time. That is, his

1 evidence about a head trauma and hospitalization would only support a few weeks of tolling, but
2 Jones missed the statute of limitations deadline by almost six years. After making these
3 determinations, the court stated:

4 The claims appear on the face of the complaint to be time-barred because the acts and
5 omissions giving rise to the claims took place on April 26, 2003, almost eight years
6 before this action was filed on March 21, 2011. Jones will be required to file a response
7 to this order, showing cause why the action should not be dismissed as time-barred. Of
8 course, Jones is not limited to arguing only equitable tolling – he may proffer any
9 argument he has to show that the statute of limitations does not bar this action.

10 Order To Show Cause, p. 4.

11 Jones then filed a response in which he urged that the head trauma and hospitalization
12 supported tolling, and that he had mental health problems and learning disabilities that should
13 excuse his failure to comply with the statute of limitations.

14 The statute of limitations period may be equitably tolled. Just as the court borrows
15 California's statute of limitations for the § 1983 action, it also borrows California's equitable
16 tolling rules. *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir. 2002). Under California law, the
17 statute of limitations may be tolled for time the plaintiff spent pursuing a remedy in another
18 forum before filing the claim in federal court. *Cervantes v. City of San Diego*, 5 F.3d 1273, 1275
19 (9th Cir. 1993). Jones makes no showing that this kind of equitable tolling applies to him, as he
20 does not assert that he ever pursued his claim against Raymond Jacobs in any other forum.

21 California Code of Civil Procedure § 352(a) provides for tolling if the person is insane
22 at the time the cause of action accrued. For purposes of the tolling provision, "the term 'insane'
23 has been defined as a condition of mental derangement which renders the sufferer incapable of
24 caring for his property or transacting business, or understanding the nature or effects of his acts."
25 *Hsu v. Mt. Zion Hospital*, 259 Cal. App. 2d 562, 571 (Cal. Ct. App. 1968); *cf. Feeley v. Southern*
26 *Pac. Trans. Co.*, 234 Cal. App. 3d 949, 952 (Cal. Ct. App. 1991) (tolling proper for time during
27 which plaintiff was in a coma immediately after the injury that gave rise to his cause of action);
28 *Snyder v. Boy Scouts of America*, 205 Cal. App. 3d 1318, 1324 (Cal. Ct. App. 1988) (post-
traumatic stress disorder does not count as "insanity" that tolls the limitations period). The
disability of insanity must exist at the time the cause of action accrues in order to toll the

1 limitations period. Cal. Code Civ. Proc. § 357. Under California law, once the cause of action
2 accrued and the statute began to run, no later disability would suspend it. *Id.*; *Larsson v. Cedars*
3 *of Lebanon Hosp.*, 97 Cal. App. 2d 704, 707 (Cal. Ct. App. 1950). Jones has not shown that this
4 tolling provision should be applied to his case.

5 First, Jones presents the same evidence about the head trauma and hospitalization that the
6 court earlier considered. As the court already explained, this evidence would only support a few
7 weeks of tolling, *See* Order To Show Cause Re. Statute of Limitations Problem, p. 4, and that
8 is not nearly enough for a plaintiff who has to account for six years of delay.

9 Second, Jones urges that he has mental health problems that warrant equitable tolling.
10 The records he submitted confirm that he is in the mental health program in the California
11 Department of Corrections and Rehabilitation. Those same records also show that he is at the
12 lowest level of care in that system (i.e., the CCCMS level), except for a rare move to the higher
13 level of care in a mental health crisis bed ("MHCB") when he expressed thoughts of suicide or
14 intent to harm others. *See* Docket # 28, exhibits, p. 22; *see also id.* at 38 ("CCCMS Annual Case
15 Review" noting present mental status on all measures as within normal limits on October 10,
16 2007); *id.* at 42 ("pt has been . . . at the CCCMS LOC for over 10 years"). Jones has failed to
17 show that his mental health problems support the tolling of the limitations period for six years.
18 The strongest evidence that Jones' mental illness did not render him incapable of caring for his
19 property or transacting business, or understanding the nature or effects of his acts is Jones' other
20 litigation activity. During the time period he now claims he was unable to pursue the claim
21 regarding the April 2003 assault, Jones was vigorously pursuing other litigation. He filed a
22 complaint in August 2003 (i.e., about three months after the incident complained of here
23 occurred) in the Eastern District, and filed several documents over the next several months in
24 that case before it was dismissed. *See Jones v. Saddik*, E. D. Cal. No. CV-03-01642 DFL-DAD.
25 Jones filed a different case in the Northern District in January 2006, and that case was pending
26 through April 2011. *See Jones v. Masterangelo*, No. C 06-490 PJH. Jones filed at least 75
27 documents in that action throughout the four years it was pending. In light of his active pursuit
28 of the claims in those other two actions, Jones' assertion that his mental illness precluded timely

1 filing of this action is unpersuasive. Jones' mental illness did not toll the limitations period.

2 Third, he urges that he has learning disabilities that precluded him from being able to
3 pursue his claim. Even assuming that one could stretch the tolling provision for insanity to
4 include tolling for a learning disability – a doubtful proposition – Jones' records undermine
5 rather than support his contention that he has a learning disability. Jones told mental health
6 evaluators in a September 13, 2010 evaluation that he had completed the 12th grade, had a GED,
7 and denied having a learning disability. *See* Docket # 28, exhibits at ¶. 22-23; *see also id.* at 31
8 (doctor's note that patient stated "I do have a high school diploma. I did time in the military.")
9 He also was excluded from the Developmental Disability Program because he "received passing
10 score on cognitive test," according to a March 9, 2004 record, *id.* at 13. Further, as with his
11 mental illness, any learning disability would not warrant tolling of the limitations period in light
12 of the evidence that he vigorously pursued two other *pro se* civil rights actions during the same
13 time period.

14 Jones' contention that his impairments warrant tolling are not persuasive because of the
15 extensive evidence of the various activities he did undertake during the time he contends he was
16 physically and mentally unable to file suit. The court need not credit a party's version of the
17 facts that is "blatantly contradicted by the record." *Scott v. Harris*, 550 U.S. 372, 380-83 (2007).

18 In this action, the statute of limitations problem is complete and obvious from the face
19 of the complaint. The court has provided Jones an opportunity to show why the action should
20 not be dismissed as time-barred, and he was unable to do so. Accordingly, this action is
21 dismissed because it is barred by the statute of limitations. *See Franklin v. Murphy*, 745 F.2d
22 1221, 1228-30 (9th Cir. 1984).

23 Jones' motion for summary judgment is DENIED. (Docket # 14.) Jones cannot show he
24 is entitled to judgment as a matter of law on his complaint because the action is time-barred.

25 The clerk shall close the file.

26 IT IS SO ORDERED.

27 Dated: November 2, 2011

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SUSAN ILLSTON
United States District Judge